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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,938	08/09/2001	Ron McCabe	6071-101	4930

20575	7590	11/17/2006

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EXAMINER
KOPPIKAR, VIVEK D

ART UNIT	PAPER NUMBER
3626	

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/925,938	MCCABE, RON
	Examiner	Art Unit	
	Vivek D. Koppikar	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 October 2006*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25 and 38-46* is/are pending in the application.

    4a) Of the above claim(s) *24 and 25* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23 and 38-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Status of the Application

1.   Claims 1-25 and 38-46 have been examined in this application. This communication is in response to the "Remarks" filed on October 10, 2006. The Finality of the Office Action dated August 2, 2006 has been withdrawn and prosecution has been re-opened.

Election/Restrictions

2.   Newly amended claims 24-25 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

As per claim 24, a system comprising an insurance premium calculator is separate and distinct from a method for employing a technical protection service.

As per claim 25, a data routing manager is separate and distinct from a method for employing a technical protection service.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 24-25 have withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 1-17 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Crawford in view of "Data Security Harmed by Blissful Ignorance" published in Insurance

Accountant on April 12, 1999 (Page 1; Volume 1, Number 11) (This reference will be

hereinafter referred to simply as "Insurance Accountant") and in further view of US Patent

Number 5,855,005 to Schuler.

(A)   As per claim 1, Crawford in view of Insurance Accountant teach a method of employing

a technical protection service pursuant to the issuance or maintenance of a data/presence

insurance policy, the method to be performed by an entity desiring coverage by the policy, the

method comprising:

        employing a technical protection service, the technical protection service protecting at

least one of data of the entity and a presence of the entity (Crawford: Col. 14, Ln. 40-44).

        Crawford does not teach the following steps which are taught by Insurance Accountant:

        obtaining the data /presence insurance by providing evidence of existence of the technical

protection service (Note: In Insurance Accountant the insured must provide the insurance

company with evidence of the capabilities of the technical protection service prior to the

insurance of the insurance policy) (Insurance Accountant: Page 2, Paragraphs 1 and 6-8); and

        memorializing a contract for the data/presence insurance (Insurance Accountant: Page 2.,

Paragraph 9).

        At the time of the invention, it would have been obvious for one of ordinary skill in the

art to have modified the teachings of Crawford with the aforementioned teachings from

Insurance Accountant with the motivation of an entity of having a means of receiving

compensation if they incurred a loss of data through a security breach in their systems, as mentioned in Insurance Accountant (Page 2, Paragraph 14).

The above mentioned prior art references do not teach the following which are taught by Schuler (Col. 1, Ln. 15-39):

Periodically reporting performance of the technical protection service to an insurer providing the data/presence insurance during performance of the contract for the data/presence insurance and adjusting the premium for data/presence insurance coverage in response to an actual result of the technical protection service after contracting for data/presence insurance.

At the time of the invention it would have been obvious to have modified the above mentioned teachings with this aforementioned teaching from Schuler with the motivation of having a more enhanced means of determining the appropriate premium to charge an insured as recited in Schuler.

(B)   As per claim 2, the combined method of Crawford in view of Insurance Accountant comprises the step of reporting to the insurer on the status of the technical protection service (Insurance Accountant: Page 2, Paragraph 8). The motivation for making this modification to the teachings of Crawford is the same as set forth in the rejection of Claim 1, above.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the teachings of Crawford with the aforementioned teachings from Insurance Accountant with the motivation of an entity of having a means of receiving compensation if they incurred a loss of data through a security breach in their systems, as mentioned in Insurance Accountant (Page 2, Paragraph 14).

The above mentioned prior art references do not teach the following which are taught by

Schuler (Col. 1, Ln. 15-39):

Periodically reporting performance of the technical protection service to an insurer

providing the data/presence insurance during performance of the contract for the data/presence

insurance and adjusting the premium for data/presence insurance coverage in response to an

actual result of the technical protection service after contracting for data/presence insurance.

At the time of the invention it would have been obvious to have modified the above mentioned

teachings with this aforementioned teaching from Schuler with the motivation of having a more

enhanced means of determining the appropriate premium to charge an insured as recited in

Schuler.

(C)   As per claim 3, the combined method of Crawford in view of Insurance Accountant

teaches a step of establishing a technical protection service which further comprises establishing

a data mirroring service (Crawford: Col. 14, Ln. 45-61).

(D)   As per claim 4, the combined method of Crawford in view of Insurance Accountant

teaches a step of establishing a technical protection service which further comprises establishing

a virus detection service (Crawford: Col. 14, Ln. 45-61).

(E)   As per claim 5, the combined method of Crawford in view of Insurance Accountant

teaches a step of creating a snapshot of the data of the entity; and if a virus is detected, rolling

back the data to a point in time before the virus was detected using the snapshot (Crawford: Col.

14, Ln. 45-61). (Note: The examiner takes the position that the archival services taught in

Crawford allow a user to roll back the data to a given point in time.)

(F)   As per claims 6 and 7, the combined method of Crawford in view of Insurance

Accountant teaches obtaining the data/presence insurance and this step further comprises

obtaining data (or presence) insurance (Crawford: Col. 2, Ln. 5-21 and Col. 14, Ln. 62-Col. 15,

Ln. 5) and Insurance Accountant (Paragraph 14). The motivation for making this modification to

the teachings of Crawford is the same as set forth in the rejection of Claim 1, above.

(G)   As per claim 8, this claims repeats features previously addressed in the rejections of

claims 1-2 and is rejected on the same basis.

(H)   As per claim 9, this claim repeats features previously addressed in the rejection of claim 3

and is rejected on the same basis.

(I)   As per claim 10, this claim repeats features previously addressed in the rejection of claim

4 and is rejected on the same basis.

(J)   As per claim 11, this claim repeats features previously addressed in the rejection of claim

5 and is rejected on the same basis.

(K)   As per claims 12-13, these claims repeat features previously addressed in the rejections of

claims 6-7, above, respectively and are rejected on the same basis.

(L)   As per claim 14, the combined method of Crawford in view of Insurance Accountant

teachings a method for providing data/presence insurance coverage to an entity in view of a

technical service protection to be employed by or provided to the entity, the method to be

performed by an insurer, the method comprising the steps of:

        Crawford teaches the use of a technical protection service (Crawford: Col. 14, Ln. 40-44)

but does not teach the following steps which are taught by Insurance Accountant:

calculating a premium for the data/presence insurance coverage, the premium calculation

depending on an expected result of the technical protection service (Insurance Accountant: Page

2, Paragraphs 1, 6-8 and 14) (Note: Insurance Accountant requires that an entity employ a

network security/protection device before an insurance policy is ensured so the premium charged

in Insurance Accountant necessarily takes into account of the expected result of the network

security/protection device); and

contracting with the insured entity for the data/presence insurance coverage in view of

technical protection service, the contracting step memorialized in an agreement whose named

parties or intended beneficiaries include the insurer and the insured entity (Insurance Accountant:

Page 2, Paragraph 9).

At the time of the invention, it would have been obvious for one of ordinary skill in the

art to have modified the teachings of Crawford with the aforementioned teachings from

Insurance Accountant with the motivation of an entity of having a means of receiving

compensation if they incurred a loss of data through a security breach in their systems, as

mentioned in Insurance Accountant (Page 2, Paragraph 14).

At the time of the invention, it would have been obvious for one of ordinary skill in the

art to have modified the teachings of Crawford with the aforementioned teachings from

Insurance Accountant with the motivation of an entity of having a means of receiving

compensation if they incurred a loss of data through a security breach in their systems, as

mentioned in Insurance Accountant (Page 2, Paragraph 14).

The above mentioned prior art references do not teach the following which are taught by

Schuler (Col. 1, Ln. 15-39):

Periodically reporting performance of the technical protection service to an insurer

providing the data/presence insurance during performance of the contract for the data/presence

insurance and adjusting the premium for data/presence insurance coverage in response to an

actual result of the technical protection service after contracting for data/presence insurance.

At the time of the invention it would have been obvious to have modified the above mentioned

teachings with this aforementioned teaching from Schuler with the motivation of having a more

enhanced means of determining the appropriate premium to charge an insured as recited in

Schuler.

(M)   As per claim 15, in the combined method of Crawford in view of Insurance Accountant

the contracting step memorializes an agreement whose named parties or intended beneficiaries

include a technical services provider, the insurer, and the insured entity, and wherein the

technical services provider provides the technical protection service to the insured entity under

the agreement (Crawford: Col. 15, Ln. 2-5) and Insurance Accountant (Page 2, Paragraphs 1, 6-9

and 14). The motivation for making this modification to the teachings of Crawford is the

same as set forth in the rejection of Claim 14, above.

(N)   As per claim 16, in the combined method of Crawford in view of Insurance Accountant

the technical services provider reports to the insurer on the status of the technical protection

service (Crawford: Figure 6B, Col. 25, Ln. 18-23) and Insurance Accountant (Page 2, Paragraphs

1, 6-9 and 14). The motivation for making this modification to the teachings of Crawford is the

same as set forth in the rejection of Claim 14, above.

(O)   As per claim 17, in the combined method of Crawford in view of Insurance Accountant

the calculating step depends on the expected result of a data mirroring service as the technical

protection service (Crawford: Col. 14, Ln. 45-61) and Insurance Accountant (Page 2, Paragraphs

1, 6-9 and 14). The motivation for making this modification to the teachings of Crawford is the

same as set forth in the rejection of Claim 14, above.

(P)   As per claims 22-23, in the combined method of Crawford in view of Insurance

Accountant the contracting step memorialized data insurance and presence insurance in the

agreement (Crawford: Col. 2, Ln. 5-21 and Col. 14, Ln. 62-Col. 15, Ln. 5) and Insurance

Accountant (Page 2: Paragraph 9 and Paragraph 14). The motivation for making this

modification to the teachings of Crawford is the same as set forth in the rejection of Claim 14,

above.

5.   Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crawford

in view of Insurance Accountant in view of Schuler and in further view of Cheeseman.

(A)   As per claims 18-21, claims repeat features previously addressed in the rejection of

claims 14, above, respectively and are rejected on the same basis. The further claimed factors

used in calculating insurance premiums are taught in risk mitigation factors which are taught in

"Disaster Protection: Insurers Will Rescue Only What You Protect" by Ian Cheeseman

(hereinafter referred to as Cheeseman) (Abstract).

At the time of the invention, it would have been obvious for one of ordinary skill in the

art to have modified the teachings of the above mentioned references with the teachings from

Cheeseman with the motivation of having a means to reduce a client's premium in response

to their adoption of disaster prevention methods.

6.   Claims 38-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crawford in

view of US Patent Number 5,855,005 to Schuler.

(A)   As per claim 38, the combined method of Crawford in view of Schuler teaches the step of

providing insurance against data loss, comprising:

establishing a remote data volume including all data of a local data volume at a point in

time (Crawford: Col. 14, Ln. 40-61);

updating the remote data volume over a communications link with data changes to the

local data volume (Crawford: Col. 14, Ln. 40-61).

Crawford does not teach the following feature which is taught by Schuler:

determining an exposure (recovery) period, the exposure period based on a time period

between a time a data change occurs on the local data volume and a time the data change occurs

on the remote data volume (i.e. amount of time where there is no protection for the data or the

amount of time the data is at risk or is exposed to a risk of being destroyed with a backup data

source) (Schuler: Col. 1, Ln. 27-32 and Col. 4, Ln. 43-47);

calculating an insurance premium using the exposure period (Schuler: Col. 1, Ln. 5-13).

At the time of the invention it would have been obvious for one of ordinary skill in the art

to have modified the teachings of Crawford with the above mentioned teachings from Schuler

with the motivation of having a means to calculate a policy premium charged to a business entity

as recited (in which the premium is based, at least in part, on the amount of exposure) in Schuler

(Col. 1, Ln. 5-13).

(B)   As per claim 39, the combined method of Crawford in view Schuler teach the following

steps:

monitoring a data rate change between the local data volume and the remote data volume,

the data rate change indicating a rate at which data changed are transmitted to the remote data

volume (Schuler: Col. 1, Ln. 27-33); and

adjusting the insurance premium in response to the data change rate (Schuler: Col. 1, Ln.

27-33).

The motivation for making this modification to the teachings of Crawford is the same as

set forth in the rejection of Claim 38, above.

(C)   As per claim 40, the combined method of Crawford in view of Schuler does not teach the

following step:

wherein adjusting the insurance premium further comprises limiting coverage for loss of

data changes from the local data volume if the data change rate increases above a predefined

threshold.

The further claimed factors used in calculating insurance premiums are taught in risk

mitigation factors which are taught in "Disaster Protection: Insurers Will Rescue Only What You

Protect" by Ian Cheeseman (hereinafter referred to as Cheeseman) (Abstract).

At the time of the invention, it would have been obvious for one of ordinary skill in the

art to have modified the teachings of the above mentioned references with the teachings from

Cheeseman with the motivation of having a means to reduce a client's premium in response

to their adoption of disaster prevention methods.

(D)   As per claims 41 and 43, this claim repeats features previously addressed in the rejection

of claim 20 and is rejected on the same basis.

(E)   As per claim 42, the combined method of Crawford in view of Schuler does not teach

that there is an inspection of the at least one of the local data volume, the remote data volume

and the communications link and also does not teach that the insurance premium is calculated in

response to this inspection, however the examiner takes Official Notice that this feature is well-

known in the art. At the time of the invention, it would have been obvious for one skilled in the

art to have included this step in the combined teachings of Crawford in view of Schuler with the

motivation of having a means to more accurately predict insurance claims.

(F)   As per claims 44-46, this claim repeats features previously addressed in the rejection of

claims 18 and 38 above and are rejected on the same basis.

Response to Arguments

7.   Applicant's arguments with respect to the pending claims have been considered but are

moot in view of the new grounds of rejection.

Conclusion

8.   Any inquire concerning this communication or earlier communications from the

examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109.

The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's

supervisor, Joseph Thomas, can be reached at (571) 272-6776. The fax telephone numbers for

this group are either (571) 273-8300 or (703) 872-9326 (for official communications including

After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information

Retrieval (PAIR). Information regarding the status of an application can be obtained from the
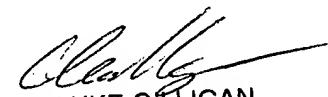
(PAIR) system. Status information for published applications may be obtained from either

Private PAIR or Public PAX. Status information for unpublished applications is available

through Private PAIR only. For more information about the PAIR system, see http://pair-

direct.uspto.gov. Should you have questions on access to the Private PAIR system, please feel

free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,

Vivek Koppikar

11/13/2006

C. LUKE GILLIGAN
PATENT EXAMINER